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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMY BETANCOURT,

Defendant and Appellant.

H045960

(Monterey County

Super. Ct. Nos. 17CR006461,

18CR001013)

In case No. 17CR006461 (the vehicle theft case), defendant Jeremy Betancourt pleaded no contest to taking a vehicle without the owner's consent with two specified prior convictions (Veh. Code, § 10851, subd. (a); Pen. Code, § 666.5, subd. (a)¹). In case No. 18CR001013 (the firearm case), defendant pleaded no contest to carrying an unregistered loaded firearm (§ 25850, subds. (a) & (c)(6)). At a combined sentencing hearing, in which defendant was also sentenced in an unrelated case in which he had been on mandatory supervision, the trial court terminated mandatory supervision and ordered defendant to serve the balance of a four-year county jail term, with a concurrent two-year term in the vehicle theft case, and a consecutive term of eight months in the firearm case.

On appeal, defendant's appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) that states the cases and facts, but raises no issue.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

We notified defendant of his right to submit written argument on his own behalf within 30 days. That period has elapsed and we have received no response from defendant.

Pursuant to *Wende, supra*, 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106 (*Kelly*), we have reviewed the entire record. Following the California Supreme Court's direction in *Kelly, supra*, at page 110, we provide a brief description of the facts and the procedural history of the cases.

BACKGROUND

A. The Vehicle Theft Case (No. 17CR006461)

Defendant knowingly drove a stolen motor vehicle with the intent to deprive the owner of the vehicle. On December 29, 2017, defendant was charged by complaint with driving or taking a vehicle without the owner's consent with two specified prior convictions (Veh. Code, § 10851, subd. (a); § 666.5, subd. (a)).

On January 10, 2018, defendant pleaded no contest to the Vehicle Code offense and admitted that he suffered two prior convictions for the same offense (Veh. Code, § 10851, subd. (a); § 666.5, subd. (a)). He also admitted that he violated his mandatory supervision in two unrelated cases (Nos. SS162052A & SS161971A). Defendant entered his plea and admissions with the understanding that he would receive two years in the vehicle theft case concurrent to the terms in the mandatory supervision cases. The written waiver and plea agreement initialed and signed by defendant provides, "I hereby waive and give up all rights regarding state and federal writs and appeals. This includes, but is not limited to, the right to appeal my conviction, the judgment, and any other orders previously issued by this court. I agree not to file any collateral attacks on my conviction or sentence at any time in the future. I further agree not to ask the Court to withdraw my plea for any reason after it is entered." Defendant orally acknowledged to the trial court that he was waiving his rights to appeal.

B. The Firearm Case (No. 18CR001013)

Defendant was carrying a loaded firearm that was not registered to him. On March 12, 2018, defendant was charged by information with possession of a firearm by a felon (§ 29800, subd. (a)(1); count 1) and misdemeanor possession of a stun gun by a felon (§ 22610, subd. (a); count 2). The offenses allegedly occurred prior to defendant being charged in the vehicle theft case (No. 17CR006461).

On March 28, 2018, on motion of the prosecution, the information was amended to add a count for carrying an unregistered loaded firearm (§ 25850, subds. (a) & (c)(6)). Defendant pleaded no contest to the amended count and admitted that the firearm was not registered to him (§ 25850, subds. (a) & (c)(6)). He entered his plea with the understanding that he would receive eight months “consecutive to [his] remaining cases,” and that he would have the opportunity to argue for a “split sentence” at sentencing. The written waiver and plea agreement initialed and signed by defendant provides, “I hereby waive and give up all rights regarding state and federal writs and appeals. This includes, but is not limited to, the right to appeal my conviction, the judgment, and any other orders previously issued by this court. I agree not to file any collateral attacks on my conviction or sentence at any time in the future. I further agree not to ask the Court to withdraw my plea for any reason after it is entered.” Defendant orally acknowledged to the trial court that he was waiving his right to appeal. The remaining counts were submitted for dismissal at the time of sentencing.

C. Sentencing and Appeal

On May 4, 2018, a sentencing hearing was held in the vehicle theft case (No. 17CR006461), the firearm case (No. 18CR001013), and the two unrelated cases in which defendant was on mandatory supervision (Nos. SS162052A & SS161971A).

In one of the mandatory supervision cases, No. SS161971A, the court terminated mandatory supervision with defendant having served his commitment in its entirety.

In the other mandatory supervision case, No. SS162052A, the trial court revoked and terminated mandatory supervision and ordered defendant to serve the balance of a four-year term in county jail. The court granted 953 days of custody credits. The court ordered defendant to pay any previously ordered or suspended fines in addition to any outstanding balance on a restitution fine of \$1,200.

In the vehicle theft case, No. 17CR006461, the court sentenced defendant to two years in county jail, concurrent to the sentence in the mandatory supervision case, No. SS162052A. Defendant was ordered to pay various amounts, including \$3,000 in victim restitution to A.B.

In the firearm case, No. 18CR001013, the court sentenced defendant to a consecutive term of eight months in county jail. Defendant was ordered to pay various amounts. The remaining counts were dismissed.

On June 28, 2018, defendant filed a timely notice of appeal in the vehicle theft case (No. 17CR006461) and the firearm case (No. 18CR001013). He did not obtain a certificate of probable cause.

An abstract of judgment was filed on July 3, 2018, regarding the vehicle theft case (No. 17CR006461) and the firearm case (No. 18CR001013). A letter filed on July 11, 2018, from the Monterey County Sheriff's Office to the trial court stated that the abstract of judgment appeared erroneous or incomplete.

DISCUSSION

Based on our review of the record, the abstract of judgment is incorrect in several regards.

First, the record reflects that the trial court imposed concurrent sentences in one of the mandatory supervision cases (No. SS162052A) and the vehicle theft case (No. 17CR006461), and a consecutive sentence in the firearm case (No. 18CR001013). However, the abstract of judgment (a) does not include that mandatory supervision case,

and (b) incorrectly indicates that defendant's total sentence for the vehicle theft and firearm cases is eight months.

Second, in the vehicle theft case (No. 17CR006461), defendant was convicted of driving or taking a vehicle without the owner's consent with specified prior convictions (Veh. Code, § 10851, subd. (a); § 666.5, subd. (a)). The abstract of judgment incorrectly indicates that defendant was convicted under section "PC 665 / VC10851(a)."

Third, in the vehicle theft case (No. 17CR006461), defendant was ordered to pay \$3,000 in victim restitution. The abstract of judgment fails to include the ordered restitution.

As the record on appeal does not include the entirety of the trial court's record in the mandatory supervision case (No. SS162052A), we will remand the matter so that the trial court may prepare an amended abstract that encompasses all three cases, that is, the mandatory supervision case (No. SS162052A), the vehicle theft case (No. 17CR006461), and the firearm case (No. 18CR001013), and that accurately reflects the court's oral pronouncement of judgment.

Having carefully reviewed the entire record, and aside from the clerical errors in the abstract of judgment, we conclude that there are no arguable issues on appeal. (*Wende, supra*, 25 Cal.3d at pp. 441-443.)

DISPOSITION

The judgment is reversed, and the matter is remanded to the trial court. The trial court is directed to prepare an amended abstract of judgment that encompasses case Nos. SS162052A, 17CR006461, and 18CR001013. The amended abstract of judgment must accurately reflect the trial court's oral pronouncement of judgment, including (a) the aggregate sentence for all three cases, (b) that in case No. 17CR006461, defendant was convicted under section Penal Code section 666.5 and Vehicle Code section 10851, subdivision (a); and (c) that in case No. 17CR006461, defendant was ordered to pay

\$3,000 in restitution to the victim. The trial court shall send a copy of the corrected abstract of judgment to the Monterey County Sheriff's Office.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

GREENWOOD, P.J.

DANNER, J.

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